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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

**CHAPTER 7 TRUSTEE'S MOTION
FOR RELIEF FROM THE STAY
AND WAIVER OF 14-DAY STAY;
IN THE ALTERNATIVE, CHAPTER
7 TRUSTEE'S MOTION FOR
INDICATIVE RULING**

Mark D. Waldron, the Chapter 7 Trustee in the above-captioned case,
hereby moves this Court pursuant to section 362(d)(1) of title 11 of the United
States Code ("Bankruptcy Code"), Rule 4001(a) of the Federal Rules of
Bankruptcy Procedure, and Local Bankruptcy Rule 4001-1 for entry of an order:

1. Lifting the automatic stay for the limited purpose of permitting Jun
Dam, Eric Blomquist, Perkins Coie LLP, Perkins Coie California, P.C., Perkins
Coie U.S., P.C., and Lowell Ness: (a) to stipulate to amend Mr. Dam's putative
class complaint for settlement purposes, in substantially the form attached hereto

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1 as **Exhibit A**,¹ and (b) to seek the approval of the United States District Court for
2 the Eastern District of Washington of their settlement, in substantially the form
3 attached hereto as **Exhibit B**;

4 2. Waiving the 14-day stay provided by Bankruptcy Rule 4001(a)(3);
5 and

6 3. In the alternative, issuing an indicative ruling pursuant to Bankruptcy
7 Rule 8008, that it would grant the foregoing relief but for Mr. Dam's appeal of the
8 Automatic Stay Order (defined below).

9 In support of this Motion, the Movant respectfully represents the following:

10 **JURISDICTION AND VENUE**

11 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§
12 1334(b) and 157, and the standing order of reference from the United States
13 District Court for the Eastern District of Washington, in the form of Local Civil
14 Rule 83.5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

15 Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

16 The statutory and legal predicate for the relief requested herein are section
17 362(d) of the Bankruptcy Code, Bankruptcy Rule 4001(a), Local Bankruptcy Rule
18 4001-1 and, in the alternative, Bankruptcy Rule 8008.

19 **FACTUAL BACKGROUND**

20 On November 19, 2018, the Debtor commenced a voluntary case under
21 Chapter 11 of the Bankruptcy Code.

22 ¹ A redline is attached with **Exhibit A** showing the proposed changes to Mr.
23 Dam's putative class action complaint. The redline was created manually.

1 On September 30, 2020, the case converted to one under chapter 7 of the
2 Bankruptcy Code. ECF No. 744.

3 Mark D. Waldron is the duly appointed Chapter 7 trustee.

4 On December 16, 2020, Jun Dam commenced a putative class action on
5 behalf of himself and WTT Token holders against Perkins Coie LLP, Lowell
6 Ness, and certain affiliates in the United States District Court for the Eastern
7 District of Washington, captioned *Dam v. Perkins*, Case No. 2:20-cv-00464-SAB
8 (“Class Action”).

9 On September 27, 2021, this Court held that the first three claims asserted
10 in the Class Action were property of the estate and, therefore, stayed. *See*
11 [Memorandum Opinion and Order Regarding Stay and Motion for Order to Show](#)
12 [Cause](#) (“Automatic Stay Order”), ECF No. 921.

13 On October 8, 2023, Mr. Dam appealed the Automatic Stay Order to the
14 United States District Court for the Eastern District of Washington, Case No.
15 2:21-cv-00291-SAB, where it is still pending.

16 On October 5, 2023, this Court approved the Trustee’s settlement
17 (“Trustee’s Settlement”) of his adversary proceeding, Adv. Proc. No. 20-80031,
18 against Perkins Coie LLP and Lowell Ness. The Trustee’s Settlement is
19 contingent on the approval by the District Court of the settlement (“Class
20 Settlement”) of the Class Action on substantially the terms set forth in **Exhibit B**.

21 Regarding the Class Settlement, the District Court cancelled a status
22 conference that had been set for October 5, 2023. The Trustee is filing this Motion
23 to facilitate the successful conclusion of the Class Settlement.

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1 **RELIEF REQUESTED**

2 By this Motion, the Trustee seeks entry of an order, pursuant to Bankruptcy
3 Code section 362(d)(1), modifying the automatic stay to permit Mr. Dam, Perkins
4 and its affiliates to:

- 5 1. amend by stipulation Mr. Dam's putative class action complaint in
6 substantially the form attached hereto as **Exhibit A**;
7 2. seek the District Court's approval of the Class Settlement in
8 substantially the form attached as **Exhibit B**, and
9 3. waive the 14-day stay the fourteen (14) day stay provided by
10 Fed.R.Bank.P. 4001.

11 The Trustee is not seeking relief from the stay to allow Mr. Dam to litigate
12 the claims of relief which belong to the estate pursuant to the Automatic Stay
13 Order. If the Class Settlement is not approved, then the stay will be in effect and
14 will prevent any party from litigating the first three claims asserted in the putative
15 class action.

16 In the alternative, the Trustee seeks entry of an order, pursuant to
17 Bankruptcy Rule 8008, that this Court would grant this Motion but for Mr. Dam's
18 appeal of the Automatic Stay Order.

19 A proposed form of Order granting the relief requested in this Motion is
20 attached hereto as **Exhibit C**.

1 **BASIS FOR RELIEF**

2 **A. Lifting the Stay Will Benefit the Estate; This Meets the Cause**
3 **Requirement**

4 Bankruptcy Code Section 362(d)(1) states that on request of a party in
5 interest, the court shall grant relief from the stay by modifying or conditioning the
6 stay for cause. “The facts of each [relief from stay] request will determine whether
7 relief is appropriate under the circumstances.” H.R. Rep. No. 95–595 at 343–44
8 (1977), reprinted in 1978 U.S.C.C.A.N 6300. *See In re Mac Donald*, 755 F.2d
9 715, 717 (9th Cir. 1985) (“Because there is no clear definition of what constitutes
10 ‘cause,’ discretionary relief from the stay must be determined on a case by case
11 basis.”).

12 In this case, relief from the stay is necessary to allow a condition of the
13 Trustee Settlement to be met: *i.e.*, approval by the District Court of the Class
14 Settlement. *See [In re Keene Corp.](#), 164 B.R. 844, 852 (Bankr. S.D.N.Y. 1994):*

15 If the trustee has standing to assert the claim for the benefit of
16 the estate, no individual creditor can assert the claim unless it
has been abandoned or the creditor obtains relief from the
automatic stay:

17 Nevertheless, we believe that under the Bankruptcy
18 Code and the circumstances of this case, if either of [the
19 non-debtor’s] asserted causes of action in this suit is
property of the debtor or a claim otherwise properly
20 asserted by the bankruptcy trustee, [the non-debtor] does
not have standing to raise that cause of action outside of
the bankruptcy proceeding. Even if [the non-Debtor]
21 could overcome this jurisdictional hurdle, it would still
have to show an abandonment of the claim by the
22 bankruptcy trustee, 11 U.S.C. § 554, or a grant of relief

1 from the automatic stay, 11 U.S.C. §§ 362(d), (e), to
2 press its claims outside of the bankruptcy proceeding.

3 *Id.* at 852 (quoting *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688,
4 702 (2d Cir. 1989) (footnote omitted)).

5 Lifting the stay for this limited purpose will benefit the estate. District
6 Court approval of the Class Settlement is a condition precedent to the Trustee
7 Settlement pursuant to which the estate will receive \$3 million from Perkins. The
8 Class Settlement pays \$4.5 million to WTT Token holders who are creditors of the
9 estate. Further, the Class Settlement contains a release of the estate. The foregoing
10 constitutes cause.

11 **B. Waiver of the 14-Day Is Appropriate**

12 The Trustee further asks the Court to waive the 14-day stay after entry of an
13 Order approving this Motion. *See* Fed.R.Bank.P. 4001(a)(3) (granting the Court
14 the authority to waive the 14-day stay provided by Rule 4001(a)(1)). Waiver is
15 appropriate. Settlement negotiations have lasted for approximately a year.
16 Furthermore, no party will be prejudiced by waiver.

17 **C. In the Alternative, the Trustee Requests an Indicative Ruling**

18 If the Court determines that it lacks jurisdiction under the divestment rule,
19 then the Trustee requests an indicative ruling that it would grant the motion for
20 relief from stay if it had jurisdiction.

21 An appeal “divests the district court of its control over those aspects of the
22 case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459
23 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982). This general divestment rule is
24 a “judge-made doctrine designed to avoid the confusion and waste of time that

1 might flow from putting the same issues before two courts at the same time.” *Cal.*
2 *Dep’t of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113,
3 1120 (9th Cir. 2002) (quoting *Kern Oil & Ref. Co. v. Tenneco Oil Co.*, 840 F.2d
4 730, 734 (9th Cir. 1988)). It “is a rule of judicial economy and not one that strips
5 the district court of subject matter jurisdiction.” *Id.* at 1121. “It should not be
6 employed to defeat its purposes nor to induce needless paper shuffling.” *Kern Oil*,
7 840 F.2d at 734 (quoting 9 J. Moore, B. Ward & J. Lucas, *Moore’s Federal*
8 *Practice* ¶ 203.11, at 3–45 n. 1 (2d ed. 1987)). “The divestment rule is subject to
9 exceptions.” *United States v. PetroSaudi Oil Servs. (Venezuela) Ltd.*, 70 F.4th
10 1199, 1211 (9th Cir. 2023).

11 The divestment rule does not apply. Relief from the stay will not turn the
12 Automatic Stay Order into a moving target for the District Court. Instead, it will
13 lead to the dismissal of Mr. Dam’s appeal pursuant to the Class and Trustee
14 Settlements. Furthermore, if the settlements do not successfully conclude, then
15 pursuant to the terms of both settlements, the parties will be restored to their prior
16 positions. As counsel for Perkins and Mr. Dam recently told the District Court:

17 [T]he basis of [the divestment] rule is to permit the
18 appellate court to review orders as issued, without
19 modification by the issuing court that could nullify or
20 change the issues on appeal. Here, these concerns are
21 not at issue because the class and Trustee settlements are
clear that all parties are restored to their former positions
(including the appeal) if both settlements are not
approved.

22 *Notice Regarding Status in Related Action*, Exhibit 4, dated September 20, 2023,
23 ECF No. 1020-5 at 2.

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1 Despite their cogent description of the rule, Perkins and Mr. Dam only
2 concede that the divestment rule's application here "is unclear." *Id.* Therefore, and
3 in an abundance of caution, should the Court conclude that it lacks jurisdiction to
4 grant relief from the stay even for settlement purposes, the Trustee requests that
5 the Court issue an indicative ruling that it would grant this Motion but for that
6 appeal. Bankruptcy Rule 8008. In that event, the Trustee will present the
7 indicative ruling to the District Court with a motion for remand to the Bankruptcy
8 Court so that this Court may enter the Order in substantially the form attached
9 hereto as **Exhibit C**.

10 **NOTICE**

11 The Trustee will provide notice of this Motion to: (a) the US Trustee; (b)
12 the Master Mailing Matrix; and (c) all parties that have filed a notice of
13 appearance and request for service of papers pursuant to Bankruptcy Rule 2002.
14 In light of the nature of the relief requested herein, the Trustee submits that no
15 other or further notice is necessary.

16 **NO PRIOR REQUEST**

17 No prior request for the relief sought herein has been made to this Court or
18 any other court.

19 **CONCLUSION**

20 Cause exists to lift the stay to allow Mr. Dam to settle the Class Action. The
21 Trustee Settlement is contingent on the successful conclusion of the Class
22 Settlement. The Trustee Settlement pays \$3 million to the estate. Further, the
23 Class Settlement pays \$4.5 million to WTT Token holders who are creditors of the
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1 estate and it provides for a release of the estate. Waiver of the 14-day stay is
2 appropriate because settlement negotiations have already taken almost a year and
3 waiver will not prejudice any parties.

4 WHEREFORE, for the reasons set forth herein, the Trustee respectfully
5 requests that this Court enter an order, substantially in the form attached hereto, as
6 **Exhibit C**, and granting such other and further relief as is just and proper. In the
7 alternative, the Trustee seeks an indicative ruling as set forth above.

8 Dated: October 19, 2023

POTOMAC LAW GROUP PLLC

9 By: /s/ Pamela M. Egan
10 Pamela M. Egan (WSB No. 54736)

11 *Attorneys for Mark D. Waldron, Chapter 7*
12 *Trustee*